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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

EVANGELINA CASTRO,) Case No. EDCV 09-1966-MLG
Plaintiff,) MEMORANDUM OPINION AND ORDER
v.)
MICHAEL J. ASTRUE,)
Commissioner of Social)
Security,)
Defendant.)

)

Plaintiff Evangelina Castro seeks judicial review of the Commissioner's denial of her application for Supplemental Security Income ("SSI") benefits under the Social Security Act. For the reasons stated below, the decision of the Commissioner is REVERSED and REMANDED for further proceedings consistent with this opinion.

I. Factual and Procedural History

Plaintiff was born on April 12, 1957. (Administrative Record ("AR") 14, 82.) She has a tenth grade education with no other specialized trade

1 or vocational training. (AR 14, 90.) Plaintiff's only work experience is
2 as an assembly line worker from 1987 to 1989. (AR 87.)

3 Plaintiff filed an application for benefits on May 21, 2007,
4 alleging that she had been disabled since April 1, 2003, due to
5 psychotic disorder not otherwise specified and substance abuse. (AR 9,
6 36.) Plaintiff's application was denied initially on October 10, 2007,
7 (AR 40-43) and upon reconsideration on February 18, 2008. (AR 46-50.) An
8 administrative hearing was held on April 16, 2009, before Administrative
9 Law Judge ("ALJ") F. Keith Varni, at which Plaintiff, represented by
10 counsel, testified. (AR 22-33.)

11 On August 4, 2009, ALJ Varni denied Plaintiff's application for
12 benefits. (AR 9-15.) The ALJ found that Plaintiff had not engaged in
13 substantial gainful activity during the time period at issue. (AR 10.)
14 The ALJ further found that the medical evidence established that
15 Plaintiff suffered from the following severe impairments: psychotic
16 disorder NOS and substance abuse. (Id.) However, the ALJ concluded that
17 Plaintiff's impairments did not meet, or were not medically equal to,
18 one of the impairments listed in 20 C.F.R., Part 404, Subpart P,
19 Appendix 1. (AR 11.) The ALJ concluded that Plaintiff retained the
20 residual functional capacity ("RFC") to perform a full range of work at
21 all exertional levels "but with the following nonexertional limitations:
22 she can perform simple, repetitive tasks (20 CFR 416.920(e); SSR 85-
23 15)." (AR 12.) The ALJ found that Plaintiff had no past relevant work.
24 (AR 14.) However, relying on the Medical-Vocational Guidelines (the
25 "grids"), the ALJ found that there were jobs that exist in significant
26 numbers in the national economy that Plaintiff could perform (20 C.F.R.
27 416.969, 416.969a). (Id.) The ALJ concluded that Plaintiff was not
28 disabled within the meaning of the Social Security Act. (Id.)

1 On September 21, 2009, the Appeals Council denied review (AR 1-3),
2 and Plaintiff timely commenced this action for judicial review. On May
3 7, 2010, the parties filed a Joint Stipulation ("Joint Stp.") of
4 disputed facts and issues. Plaintiff contends that the ALJ erred by: (1)
5 improperly evaluating the severity of Plaintiff's physical impairments;
6 (2) failing to properly consider the lay testimony of Plaintiff's
7 friend; (3) failing to re-contact Plaintiff's treating physician and/or
8 secure a psychiatric consultative examination; (4) improperly evaluating
9 Plaintiff's impairments in accordance with the criteria of the Listing
10 of Impairments; and (5) improperly relying on the grids in concluding
11 that there were a significant number of jobs in the national economy
12 that Plaintiff could perform. (Joint Stp. 2-3.) Plaintiff requests that
13 this Court reverse and remand for an award of benefits, or in the
14 alternative, reverse and remand for a new administrative hearing. (Joint
15 Stp. 40-41.) The Commissioner requests that the ALJ's decision be
16 affirmed. (Joint Stp. 41.)

17 After reviewing the parties' respective contentions and the record
18 as a whole, the Court finds Plaintiff's contention regarding the ALJ's
19 error in relying on the grids to be meritorious and remands this matter
20 for further proceedings consistent with this opinion.¹

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22 **II. Standard of Review**

23 Under 42 U.S.C. § 405(g), a district court may review the Social
24 Security Commissioner's decision to deny benefits. The Court must uphold

25
26 ¹ The Court will only address the ALJ's reliance on the grids in
27 detail. However, as noted above, Plaintiff also contends that the ALJ
28 made various other errors. Because the ALJ erred by improperly relying
on the grids, the Court does not reach these remaining issues and will
not decide whether these issues would independently warrant relief.

1 the Social Security Administration's disability determination unless it
2 is not supported by substantial evidence or is based on legal error.
3 *Ryan v. Comm'r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008)(citing
4 *Stout v. Comm'r of Soc. Sec. Admin.*, 454 F.3d 1050, 1052 (9th Cir.
5 2006)). Substantial evidence means more than a scintilla, but less than
6 a preponderance; it is evidence that "a reasonable person might accept
7 as adequate to support a conclusion." *Lingenfelter v. Astrue*, 504 F.3d
8 1028, 1035 (9th Cir. 2007)(citing *Robbins v. Soc. Sec. Admin.*, 466 F.3d
9 880, 882 (9th Cir. 2006)). To determine whether substantial evidence
10 supports a finding, the reviewing court "must review the administrative
11 record as a whole, weighing both the evidence that supports and the
12 evidence that detracts from the Commissioner's conclusion." *Reddick v.
13 Chater*, 157 F.3d 715, 720 (9th Cir. 1996). "If the evidence can support
14 either affirming or reversing the ALJ's conclusion," the reviewing court
15 "may not substitute [its] judgment for that of the ALJ." *Robbins*, 466
16 F.3d at 882.

17

18 III. Discussion

19 Plaintiff contends that the ALJ erred by neglecting to obtain
20 vocational expert testimony on the issue of whether there existed work
21 in the national economy that Plaintiff could perform and instead relying
22 solely on the grids. (Joint Stip. 38.) The Court agrees.

23 Once a claimant has demonstrated the existence of a severe
24 impairment that precludes her from doing past work, the burden shifts to
25 the Commissioner to demonstrate that there are a significant number of
26 jobs in the national economy that the claimant can perform despite her
27 impairment. *Burkhart v. Bowen*, 856 F.2d 1335, 1340 (9th Cir. 1988). The
28 Commissioner may satisfy this burden by: (1) taking the testimony of a

1 vocational expert or (2) applying the grids at 20 C.F.R., Part 404,
2 Subpart P, Appendix 2. *Id.*

3 The grids provide a system "for disposing of cases that involve
4 substantially uniform levels of impairment." *Desrosiers v. Sec'y of*
5 *Health & Human Servs.*, 846 F.2d 573, 578 (9th Cir. 1988) (Pregerson, J.,
6 concurring). The grids categorize jobs by three physical-exertional
7 requirements: "[m]aximum sustained work capacity limited to sedentary
8 work," "[m]aximum sustained work capacity limited to light work," and
9 "[m]aximum sustained work capacity limited to medium work." *Tackett v.*
10 *Apfel*, 180 F.3d 1094, 1101 (9th Cir. 1999). These exertional levels are
11 further divided by a claimant's age, education, and work experience. *Id.*
12 The grids direct a finding of "disabled" or "not disabled" depending on
13 a claimaint's particular combination of factors. *Id.*

14 There are "strict limits on when the Secretary may rely on the
15 Guidelines." *Desrosiers*, 846 F.2d at 578 (Pregerson, J., concurring). An
16 ALJ may only substitute the grids for vocational expert testimony when
17 they "completely and accurately represent a claimant's limitations."
18 *Tackett*, 180 F.3d at 1101 (emphasis in original); see also *Holohan v.*
19 *Massanari*, 246 F.3d 1195, 1208 (9th Cir. 2001). This means that "a
20 claimant must be able to perform the full range of jobs in a given
21 [exertional] category" for the grids to apply. *Tackett*, 180 F.2d at 1101
22 (emphasis in original); see also *Burkhart*, 856 F.2d at 1340. Because
23 "the grids are predicated on a claimant suffering from an impairment
24 which manifests itself by limitations in meeting the strength
25 requirements of jobs[,] they may not be fully applicable" for a
26 claimant's non-exertional limitations. *Lounsberry v. Barnhart*, 468 F.3d
27 1111, 1115 (9th Cir. 2006). The mere allegation of a nonexertional
28 limitation, however, does not preclude the use of the grids. For the

1 grids to be inadequate, the nonexertional limitation must be
2 "sufficiently severe so as to significantly limit the range of work
3 permitted by the claimant's exertional limitations." *Hoopai v. Astrue*,
4 499 F.3d 1071, 1075 (9th Cir. 2007) (quoting *Burkhart*, 856 F.2d at
5 1340); see also *Desrosiers*, 846 F.2d at 577. When "a claimant's
6 nonexertional limitations are in themselves enough to limit his range of
7 work, the grids do not apply, and the testimony of a vocational expert
8 is required to identify specific jobs within the claimant's abilities."
9 *Polny v. Bowen*, 864 F.2d 661, 663-64 (9th Cir. 1988).

10 In the present case, the ALJ found that, while Plaintiff had an RFC
11 to perform a full range of work at all exertional levels, her
12 psychiatric impairments limited her to "simple, repetitive tasks." (AR
13 12.) The grids do not completely describe these nonexertional
14 limitations, which would preclude her from performing the full range of
15 work at any exertional level. As such, it was improper for the ALJ to
16 rely on the grids at step five rather than taking vocational expert
17 testimony. See, e.g., *Tackett*, 180 F.3d at 1103-04 (vocational expert
18 testimony necessary because claimant's need to shift, stand up, or walk
19 around every thirty minutes is significant nonexertional limitation not
20 contemplated by grids); *Polny*, 864 F.2d at 663-64 (grids inapplicable
21 because, although claimaint was "capable of performing a wide range of
22 jobs," he could not perform ones that were "highly stressful," that
23 "require[d] comprehension of complex instructions," or "require[d]
24 dealing with the public"); *Burkhart*, 856 F.2d at 1341 & n.4 (grids
25 inapplicable because they did not account for the claimaint's need to
26 avoid stressful environments, his inability to regularly use his hands,
27 or his vision problems). In addition, it was improper for the ALJ to
28 rely on the grids here where Plaintiff's only severe impairments were

1 psychiatric. *Holohan*, 246 F.3d at 1208-09 (ALJ committed legal error by
2 relying on grids where ALJ found that claimaint had no severe physical
3 impairments and her only severe impairments were psychiatric).

4 Instead of taking vocational expert testimony, the ALJ merely
5 stated that, although Plaintiff's "ability to perform work at all
6 exertional levels has been compromised by nonexertional mental
7 limitations," nevertheless she "could perform unskilled work at all
8 levels of exertion, including such jobs as cleaner, maid, housekeeper,
9 kitchen helper, laundry work, assembler and packager." (AR 14.) This was
10 insufficient to meet the ALJ's burden at step five. The ALJ should have
11 had a vocational expert testify as to whether there were jobs in the
12 national economy that Plaintiff could perform despite her specific
13 nonexertional limitations. Accordingly, the matter shall be remanded for
14 additional proceedings to correct this error.

15

16 **IV. Conclusion**

17 For the reasons stated above, the decision of the Social Security
18 Commissioner is REVERSED and REMANDED for further proceedings consistent
19 with this opinion.

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21 DATED: May 19, 2010

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23 MARC L. GOLDMAN

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MARC L. GOLDMAN
United States Magistrate Judge